

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
PAPPAS RADIO OF CALIFORNIA)	File No. 0002640000
)	
Application For Waiver for Fixed Point-to-Point)	
Microwave License WQEZ451 in the Microwave)	
Industrial/Business Radio Pool)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 20, 2006

Released: November 21, 2006

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address Pappas Radio of California's (Pappas) application for modification of Microwave Industrial/Business Pool Station WQEZ451¹ (Station WQEZ451) and accompanying request for waiver² of Section 101.603(a)(7) of the Commission's Rules³ to permit Pappas to use Station WQEZ451 as the final RF link in connection with the delivery of broadcast programming material to the transmitter site of Station KTRB(AM), San Francisco, California. For the reasons stated below, we grant Pappas' Waiver Request.

II. BACKGROUND

2. Pappas is authorized to construct a modification to Radio Station KTRB(AM) to operate on 860 kHz at San Francisco, California.⁴ Pappas notes that it is in the process of constructing the new transmitter site at Tubbs Island in Sonoma County, California.⁵ On May 24, 2006, Pappas received an authorization to construct and to operate Station WQEZ451, which operates from Mount Diablo South Peak to the proposed KTRB(AM) transmitter site at Tubbs Island.⁶ Pappas indicates that it intends to construct that station for control, data, and network services.⁷

3. Pappas has been investigating various means of delivering the signal from the radio station's main studio location in San Francisco to the transmitter site at Tubbs Island. Pappas has concluded that it must rely on spectrum in the Microwave Industrial/Business service to deliver the

¹ File No. 0002640000 (filed Jun. 5, 2006) (Modification Application).

² See Modification Application, Request for Waiver of Section 101.603(a)(7) (Waiver Request).

³ 47 C.F.R. § 101.603(a)(7).

⁴ See File No. BMJP-20020910AAB, as last modified by File No. BMP-20050318ACJ.

⁵ Waiver Request at 1.

⁶ File No. 0002557263 (granted May 24, 2006). See also Wireless Telecommunications Bureau Site-by-Site Action, Report No. 2518, *Public Notice* (rel. May 31, 2006) at 11.

⁷ Waiver Request at 2.

broadcast signal from the main studio to the transmitter site.⁸ Section 101.603(a)(7) of the Rules⁹ prohibits the use of this spectrum in the 6 GHz band for the final RF link to deliver KTRB(AM)'s broadcast signal to the Tubbs Island transmitter site.¹⁰ Accordingly, on June 5, 2006, Pappas filed the Modification Application with the Waiver Request to permit the use of Station WQEZ451 as the final RF link for the delivery of KTRB(AM)'s programming to its transmitter.¹¹ No oppositions or objections were filed.

III. DISCUSSION

4. Section 1.925(b)(3) of the Commission's Rules requires parties seeking a waiver to demonstrate that:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹²

The Part 101 rules were simplified and streamlined to "encourage more efficient use of the microwave spectrum by permitting more intensive use of microwave equipment,"¹³ and to "lead to economies of scale in microwave equipment production and lower equipment prices to licensees."¹⁴ Section 101.603(a)(7) of the Commission's Rules ensures that private operational fixed stations are used for private, internal purposes and prevents broadcasters from causing congestion when Part 74 Broadcast Auxiliary Service frequencies are available.

5. Pappas claims both that there are unique factual circumstances that warrant the grant of the waiver request, and that the underlying purpose of the rule would not be frustrated by the proposed frequency use.¹⁵ Pappas argues that there is no available spectrum in the 948 MHz Broadcast Auxiliary Service band, and any additional usage would cause impermissible interference to existing microwave licenses in violation of Section 101.105 of the Commission's Rules.¹⁶ Second, Pappas' frequency coordinator, Micronet, reviewed the available spectrum in the other possible spectrum bands, and found that neither the 13 GHz band, nor the 18 GHz band, nor the 23 GHz band would satisfy the reliability

⁸ Waiver Request at 1.

⁹ 47 C.F.R. § 101.603(a)(7).

¹⁰ Waiver Request at 1-2.

¹¹ Modification Application. The application was accepted for filing on June 14, 2006. See Wireless Telecommunications Bureau Site-by-Site Accepted for Filing, Report No. 2537, *Public Notice* (rel. Jun. 14, 2006) at 38.

¹² 47 C.F.R. § 1.925(b)(3)(i)-(ii).

¹³ Common Carrier and Private Operational Fixed Services, *Report and Order*, WT Docket No. 94-148, CC Docket No. 93-2, and RM-7861, 11 FCC Rcd 13449, 13452 (1996).

¹⁴ *Id.* at 13453. The simplified and streamlined rules also reduced regulatory burdens, benefiting both the public and the Commission. *Id.* at 13452.

¹⁵ Waiver Request at 2.

¹⁶ Waiver Request at 2, citing 47 C.F.R. § 101.105.

requirements set forth by the equipment manufacturers for the 33-mile path.¹⁷ Pappas contends that these bands suffer substantial signal degradation due to terrain and weather.¹⁸ Third, Pappas states that it plans to construct the 6.715 GHz link for control, telephone, and data network services in any case, and thus additional use of the link for audio transmission would be spectrally efficient.¹⁹ Finally, Pappas argues that the use of other spectrum would be inefficient due to the typical required bandwidth of 12.5 MHz, whereas the instant facility would only require a 10 MHz bandwidth.²⁰ Pappas concludes that operation on 6.715 GHz would result in the most spectrally-efficient usage, which would not cause interference to other licensees, and that would not suffer substantial fade due to terrain and weather factors.²¹ Pappas states that the Commission has granted waivers of Section 101.603(a)(7) based upon similar showings,²² citing *Maryland Public Broadcasting Commission*²³ and *Transmission Holdings, Inc.*²⁴

6. We conclude that Pappas has justified a waiver under the second prong of the waiver standard. Pappas has shown that no reasonable alternative exists to its use of frequencies in the 6 GHz band. Specifically, Pappas has shown that BAS frequencies in the 944-952 MHz band are not available and that no other frequencies are available that would provide a reliable communications link between its main studio and its transmitter site.²⁵ Furthermore, in light of the fact that Pappas had pre-existing plans to use Station WQEZ451 for control, telephone, and data network services, we believe that allowing Pappas to use the same station to transmit programming to the transmitter site would be spectrally efficient. We conclude, in view of the foregoing, that, pursuant to Section 1.925(b)(3)(ii) of the Commission's Rules,²⁶ that grant of the waiver would be in the public interest. Accordingly, we believe that Pappas should be granted a waiver of Section 101.603(a)(7)²⁷ of the Commission's Rules.²⁸

IV. CONCLUSION AND ORDERING CLAUSES

7. Accordingly IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Pappas Radio of California on June 5, 2006, IS GRANTED.

¹⁷ Waiver Request at 2 and Exhibit A.

¹⁸ Waiver Request at 2-3.

¹⁹ Waiver Request at 3.

²⁰ Waiver Request at 3.

²¹ Waiver Request at 3.

²² Waiver Request at 3.

²³ Maryland Public Broadcasting Commission, *Memorandum Opinion and Order*, 21 FCC Rcd 1647 (WTB BD 2006).

²⁴ Transmission Holdings, Inc., *Order*, 14 FCC Rcd 3769 (WTB 1999).

²⁵ See Waiver Request, Exhibit A.

²⁶ 47 C.F.R. § 1.925(b)(3)(ii).

²⁷ 47 C.F.R. § 101.603(a)(7).

²⁸ See, e.g., Maryland Public Broadcasting Commission, *Memorandum Opinion and Order*, 21 FCC Rcd 1647 (WTB BD 2006); Transmissions Holdings, Inc., *Order*, 14 FCC Rcd 3769 (WTB 1999). Pappas also requested expedited action on its Waiver Request. Waiver Request at 3-4. In light of our action granting the Waiver Request, this request is moot.

8. IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL PROCESS Pappas' pending application, File No. 0002640000, in accordance with this *Memorandum Opinion and Order* and the applicable Commission Rules.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau